that the prosecution was instituted when the information was laid on July the 6th, and therefore was not instituted with the consent in writing of the chief constable and the conviction was bad.

Wills J. at page 162 said:

"But where there is a prosecution, I cannot see any reason why the laying of the information (which started it) is not the commencement of the prosecution; and I certainly think this has been the meaning of the phrase commonly accepted in the profession."

Wright J. at page 163 said:

"In *Rex* v. *Willace*, 'the judges, at a conference, unanimously held that the information and proceeding before the magistrate was the commencement of the prosecution, within the meaning of the Act,' 8 & 9 Will. 3, c. 26, s. 9, which provided that no prosecution should be made for any offence against that Act, unless such prosecution be commenced within three months next after such offence committed. The case of *Reg.* v. *Brooks* is to the same effect, though not so satisfactory, for there the fifteen judges, after holding that the prosecution was commenced by the information and warrants to apprehend, appear to have added the words, 'or at all events by the apprehension of the prisoners.' The case of *Rex* v. *Willace*, however, is a sufficient authority for the view which we have adopted."

In the case of *Tengku Abdul Aziz* v. *Public Prosecutor*, the provisions of section 129(v) were considered. That sub-section provides "that no sanction given under the provisions of sub-section (i) of that section shall remain in force unless acted upon within one month from the date on which it was given." The sanction was granted on 11th November, 1950, and the police applied for a summons on 11th December, 1950, but the magistrate did not give his direction that the summons should issue until the 2nd January, 1951. The Court of Appeal said in its judgement, "In our opinion, the sanction is acted upon when the Public Prosecutor applies to the court for the issue of process, and in this case that was done within the required period."

Dato' Marshall said that ordinarily sanctions should have been produced when the information is laid before the magistrates or when the learned Deputy Public Prosecutor applies for a summons, and went on to say that under section 58(2) the arrest or detention of a person could be exercised without any written sanction, such arrest or detention being one of two things which initiated or amounted to an institution of proceedings. The other occasion would be the production of the accused before the court and charged with the offence.

I would say that the arrest of the accused and his detention having been allowed by section 58(2) without a written sanction, the written sanction should have been produced on the 10th of March, 1964, when the accused was charged. In this case the appellant claimed trial, but if he had pleaded guilty the court could have proceeded to convict him and would have therefore done so without any written sanction.

I would, therefore, set aside the conviction and if the fines have been paid, order that they be returned to the appellant.

Conviction set aside.

JEREMIAH v. LEE YEW KWAI

[Privy Council (Lord Hodson, Lord Pearce and Lord Wilberforce) July 27, 1965]

[Privy Council Appeal No. 46 of 1964]

Negligence — Contributory negligence — Apportionment of blame for accident — Finding of trial judge — Not possible for appellate court to intervene and substitute fresh finding.

Practice and Procedure — Appeal — Apportionment of blame for accident — Finding of trial judge — Intervention.

In this case the trial judge had found that the plaintiff was guilty of contributory negligence and therefore awarded him only 50% of the damages. An appeal to the Federal Court was dismissed and on further appeal to the Privy Council,

Held: this was purely a question of deciding what is the right apportionment, if any, of blame on two persons when they were suddenly involved in a traffic emergency and it would not be possible for an appellate court to intervene and substitute a fresh finding instead of that which was found by the learned trial judge.

PRIVY COUNCIL.

Denis Murphy and *F. Daly* for the appellants.

J. D. May Q.C., and *Anthony Allen* for the respondents.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Pearce: This is an appeal by the plaintiff from an order of the Federal Court of Malaysia dismissing the plaintiff's appeal from an order of the High Court in Malaya at Ipoh, whereby it gave judgment for the plaintiff against the defendants for 25,930 dollars. The trial judge found that he had been guilty of contributory negligence, and therefore awarded him only 50 per cent. of the damages. The law as to contributory negligence is, by statute, the same as in this country. The grounds of appeal are that the learned judge should not have found on the evidence that the plaintiff was guilty of any negligence, or if he did find him guilty of negligence, he should not have estimated its amount at so high a figure as 50 per cent.

The plaintiff was travelling on a motorcycle along the main road, and into that road, on his nearside, ran a lane down which, unknown to him, a lorry was proceeding. About 10 ft. back from the place where the lane entered the main road a van was drawn up by the side of the road and partly on the verge, leaving about 4 ft. or so

projecting into the road. As a result, on the plaintiff's story, he was unable to see the lorry until he came to the front of the vehicle parked on his near side, that is to say, about 10 ft. or 12 ft. from the lorry. The lorry driver's evidence was that he had halted and taken all the necessary precautions, but that was disbelieved by the learned judge.

How far the learned judge believed the details of the plaintiff's account is uncertain. The plaintiff said that he was travelling at 16 miles per hour, and as he was unable to pull up in time to avoid running into the lorry, he swerved to his right and accelerated. The learned judge took the view that if the plaintiff was going at the speed he said, and if he was keeping a proper lookout, it was still very negligent of him to attempt the manoeuvre of going in front of the lorry, and it was extremely dangerous.

He then discussed that matter in more detail, and formed the view that owing to the shortness of distance which the plaintiff had in which to pull up he would probably have collided with the lorry in any event, but he formed the view that had the lorry gone on, and had the plaintiff braked, he would have had adequate room to pass behind the lorry, no doubt swerving as much as was necessary.

The learned judge discounted the agony of the moment which was put forward by counsel, on the ground that it was not the defendant but the stationary van which had created the emergency. He then went on to say: ". . . it is a practical impossibility to apportion the proportions of culpability which are the cause of the accident, and I have come to the conclusion that the proper award would be that the plaintiff contributed 50 per cent. towards the damage which he sustained".

In the Court of Appeal the learned Lord President said: "It is not for this court to substitute its own views as to what happened in a case of this sort which depends so much on credibility for those of the trial judge but I find comfort in the consideration that my own views do on the whole coincide with the trial judge's conclusions. On the whole the evidence, to put it at the lowest, suggests that the motor cyclist was keeping a less than adequate lookout". He then gave some reasons for this view, and pointed out that if the plaintiff had wished to go in front of the lorry he had not only a broad road on which to execute this manoeuvre, but he had a road coming in at 45 degrees on the right up which he might have gone as an escape route.

Leaving aside the question whether the learned Lord President's view of that possibility should be adopted, the fact remains that the learned judge, having heard the witnesses, came to the conclusion that the plaintiff was 50 per cent. to blame. He took the view that had he pursued what one might describe as the normal course in such an emergency, namely that of applying his brakes and seeing whether he could go behind the lorry, there would have been room for him to do so.

This is purely a question of deciding what is the right apportionment, if any, of blame on two persons when they are suddenly involved in a traffic emergency. In their Lordships' view it would not be possible for this court to intervene and substitute a fresh finding instead of that which was found by the learned trial judge. Their Lordships will therefore report to the Head of Malaysia that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Lipton & Jefferies; Stanley & Co.*

RAVAMANICKAM v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Ismail Khan J.) August 19, 1965]

[K.L. — Federal Court Criminal Appeal No. 29 of 1965]

Criminal law and procedure — Trial — Unsworn evidence of child — Corroboration — Need for adequate direction to jury.

Penal Code, ss. 302 & 304 — Murder — Conviction for culpable homicide not amounting to murder — Direction to jury on corroboration.

The appellant was convicted of culpable homicide not amounting to murder. The only direct evidence against the appellant was the unsworn evidence of a boy of eight years old, the son of the deceased woman. In his direction to the jury the trial judge said: "The general rule is that the unsworn evidence of a child must not be accepted unless it is corroborated on some material points by independent evidence". On appeal,

Held: the direction did not go far enough. The rule as to corroboration is a living part of the law and it is not sufficient merely to state the bare rule to the jury. It must be stated and illuminated in such a way that it will be a vital factor in the consideration by them of the issues before them.

Cases referred to:—

(1) *Chao Chong & Ors.* v. *Public Prosecutor* [1960] M.L.J. 238, 240.

(2) *Mohamed Sugal Esa* v. *The King* A.I.R. 1946 P.C. 3, 6.

FEDERAL COURT.

R. Ponnudurai for the appellant.

Syed Hassan Aljaffri (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): This appellant was prosecuted for the murder of a woman named Mailomba in contravention of section 302 of the Penal Code. In the event he was found not guilty of that offence but was